IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

Bail Appl..No. 4896 of 2007()

CRMP.3115/2007 of DISTRICT COURT, THODUPUZHA
CRIME NO.153 OF 2007 OF VANDANMEDU POLICE STATION

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: PETITIONER/ACCUSED NOS. 1 TO 5

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1. SALIM, AGED 40, RESIDING AT
   AKKATTUPARAMBIL HOUSE, B.T.R.NAGAR,
   VANDANMEDU, UDUMBAN CHOLA TALUK, IDUKKI.

2. SULAIMAN, S/O.HUSSAIN RAWTHER,
   AGED 38, FOUSIA MANZIL, ANNYARTHOLU.

3. SHAMS, S/O.ABDUL VAHAB, AGED 30,
   PUTHENPEEDIKAYIL, ANNYARTHOLU.

4. KABEER, S/O.KUNJU MUHAMMED,
   POOTHAKUZHIYIL, MOONKALAR P.O.,
   VANDIPERIYAR.

5. JALEEL, S/O.KASIM, PUTHENPURAYIL,
   ANNYARTHOLU.

BY ADV. SRI.K.S.MADHUSOODANAN

RESPONDENTS: COMPLAINANT & FORMAL PARTY

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1. STATE OF KERALA TO BE REP. BY PUBLIC
   PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
   VANDANMEDU POLICE STATION,
   VANDANMEDU.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 13/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.No. 4896 of 2007

Dated this the 13th day of August, 2007

ORDER

The petitioners are accused 1 to 5. They face allegations, inter alia, under Sections 365, 364 A and 385 r/w 149 I.P.C. The crime has been registered on the basis of a private complaint filed by the defacto complainant before the learned Magistrate on 5.7.07, which was referred to the police for investigation under Section 156(3) Cr.P.C. The defacto complainant had alleged that he was forcibly detained and that an amount of Rs.2,000/- forcibly taken away from his possession. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the real incident did not take place in the manner alleged in the complaint at all. The nephew of the 5th petitioner/accused was allegedly involved in an incident of theft of an amount of Rs.3,000/- from the house of the 5th petitioner. He had allegedly handed over the said booty to the defacto complainant. The defacto complainant had helped the said nephew, a child aged 16 years to purchase a mobile phone. He had also kept the balance amount in his possession. When relatives and neighbours came to know of the conduct of the defacto complainant,

they raised objections and insisted that the money received from the said child offender must be returned by the defacto complainant. There were disputes and quarrels in respect of that. It is, in these circumstances, that the totally false allegations have been raised and the private complaint was filed by the defacto complainant. The petitioners may not be left to endure the undeserved trauma of arrest and detention. They may be granted anticipatory bail, submits the learned counsel for the petitioners.

3. The learned Public Prosecutor does not oppose the application. The learned Public Prosecutor submits that the investigation reveals that the real incident was not as alleged in the private complaint, but as indicated by the counsel for the petitioners. There was a dispute regarding the role played by the defacto complainant in the thieving of money by the said child offender and consequent to that there were disputes between the defacto complainant and the accused. Subject to appropriate conditions, which shall safeguard the interests of a proper and efficient investigation, directions under Section 438 Cr.P.C can be issued in favour of the petitioners, accepts the learned Public Prosecutor . I am satisfied, in these circumstances, that directions under Section 438 Cr.P.C can be issued in the absence of opposition by the learned Public Prosecutor

and in the light of facts to which brief reference has already been made by me, I do not think it necessary to narrate the facts in any greater detail in this order.

4. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioners shall appear before the learned Magistrate at 11 a.m on 20.08.2007. They shall be enlarged on regular bail on their executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 4 p.m on 21.08.2007 & 22.08.07 and thereafter as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law as if those directions were not issued at all;

iv) If the petitioners were arrested prior to their surrender on 20.08.07 as directed in clause (1) above, they shall be released from

custody on their executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 20.08.07.

(R.BASANT, JUDGE)

rtr/-